

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2371

AN ACT

AMENDING SECTION 32-2181, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; RELATING TO THE DEPARTMENT OF HOMELAND SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2181, Arizona Revised Statutes, is amended to
3 read:

4 32-2181. Notice to commissioner of intention to subdivide
5 lands; unlawful acting in concert; exceptions; deed
6 restrictions; definition

7 A. Before offering subdivided lands for sale or lease, the subdivider
8 shall notify the commissioner in writing of the subdivider's intention. The
9 notice shall contain:

10 1. The name and address of the owner. If the holder of any ownership
11 interest in the land is other than an individual, such as a corporation,
12 partnership or trust, a statement naming the type of legal entity and listing
13 the interest and the extent of any interest of each principal in the
14 entity. For the purposes of this section, "principal" means any person or
15 entity having a ten per cent or more financial interest or, if the legal
16 entity is a trust, each beneficiary of the trust holding a ten per cent or
17 more beneficial interest.

18 2. The name and address of the subdivider.

19 3. The legal description and area of the land.

20 4. A true statement of the condition of the title to the land,
21 including all encumbrances on the land, and a statement of the provisions
22 agreed to by the holder of any blanket encumbrance enabling a purchaser to
23 acquire title to a lot or parcel free of the lien of the blanket encumbrance
24 on completion of all payments and performance of all of the terms and
25 provisions required to be made or performed by the purchaser under the real
26 estate sales contract by which the purchaser has acquired the lot or
27 parcel. The subdivider shall file copies of documents acceptable to the
28 department containing these provisions with the commissioner before the sale
29 of any subdivision lot or parcel subject to a blanket encumbrance.

30 5. The terms and conditions on which it is intended to dispose of the
31 land, together with copies of any real estate sales contract, conveyance,
32 lease, assignment or other instrument intended to be used, and any other
33 information the owner or the owner's agent or subdivider desires to present.

34 6. A map of the subdivision that has been filed in the office of the
35 county recorder in the county in which the subdivision is located.

36 7. A brief but comprehensive statement describing the land on and the
37 locality in which the subdivision is located.

38 8. A statement of the provisions that have been made for permanent
39 access and provisions, if any, for health department approved sewage and
40 solid waste collection and disposal and public utilities in the proposed
41 subdivision, including water, electricity, gas and telephone facilities.

42 9. A statement as to the location of the nearest public common and
43 high schools available for the attendance of school age pupils residing on
44 the subdivision property.

1 10. A statement of the use or uses for which the proposed subdivision
2 will be offered.

3 11. A statement of the provisions, if any, limiting the use or
4 occupancy of the parcels in the subdivision, together with copies of any
5 restrictive covenants affecting all or part of the subdivision.

6 12. The name and business address of the principal broker selling or
7 leasing, within this state, lots or parcels in the subdivision.

8 13. A true statement of the approximate amount of indebtedness that is
9 a lien on the subdivision or any part of the subdivision and that was
10 incurred to pay for the construction of any on-site or off-site improvement,
11 or any community or recreational facility.

12 14. A true statement or reasonable estimate, if applicable, of the
13 amount of any indebtedness that has been or is proposed to be incurred by an
14 existing or proposed special district, entity, taxing area or assessment
15 district, within the boundaries of which the subdivision, or any part of the
16 subdivision, is located, and that is to pay for the construction or
17 installation of any improvement or to furnish community or recreational
18 facilities to the subdivision, and which amounts are to be obtained by ad
19 valorem tax or assessment, or by a special assessment or tax upon the
20 subdivision or any part of the subdivision.

21 15. A true statement as to the approximate amount of annual taxes,
22 special assessments or fees to be paid by the buyer for the proposed annual
23 maintenance of common facilities in the subdivision.

24 16. A statement of the provisions for easements for permanent access
25 for irrigation water where applicable.

26 17. A true statement of assurances for the completion of off-site
27 improvements, such as roads, utilities, community or recreational facilities
28 and other improvements to be included in the offering or represented as being
29 in the offering, and approval of the offering by the political subdivision
30 with authority. This statement shall include a trust agreement or any other
31 evidence of assurances for delivery of the improvements and a statement of
32 the provisions, if any, for the continued maintenance of the improvements.

33 18. A true statement of the nature of any improvements to be installed
34 by the subdivider, the estimated schedule for completion and the estimated
35 costs related to the improvements that will be borne by purchasers of lots in
36 the subdivision.

37 19. A true statement of the availability of sewage disposal facilities
38 and other public utilities, including water, electricity, gas and telephone
39 facilities in the subdivision, the estimated schedule for their installation,
40 and the estimated costs related to the facilities and utilities that will be
41 borne by purchasers of lots in the subdivision.

42 20. A true statement as to whether all or any portion of the
43 subdivision is located in an open range or area in which livestock may roam
44 at large under the laws of this state and what provisions, if any, have been

1 made for the fencing of the subdivision to preclude livestock from roaming
2 within the subdivided lands.

3 21. If the subdivider is a subsidiary corporation, a true statement
4 identifying the parent corporation and any of the following in which the
5 parent or any of its subsidiaries is or has been involved within the past
6 five years:

7 (a) Any subdivision in this state.

8 (b) Any subdivision, wherever located, for which registration is
9 required pursuant to the federal interstate land sales full disclosure act.

10 (c) Any subdivision, wherever located, for which registration would
11 have been required pursuant to the federal interstate land sales full
12 disclosure act but for the exemption for subdivisions whose lots are all
13 twenty acres or more in size.

14 22. A true statement identifying all other subdivisions, designated in
15 paragraph 21 of this subsection, in which any of the following is or, within
16 the last five years, has been directly or indirectly involved:

17 (a) The holder of any ownership interest in the land.

18 (b) The subdivider.

19 (c) Any principal or officer in the holder or subdivider.

20 23. A true statement as to whether all or any portion of the
21 subdivision is located in territory in the vicinity of a military airport or
22 ancillary military facility as defined in section 28-8461, in territory in
23 the vicinity of a public airport as defined in section 28-8486, on or after
24 July 1, 2001, in a high noise or accident potential zone as defined in
25 section 28-8461 or on or after July 1 of the year in which the subdivision
26 becomes located in a high noise or accident potential zone. The statement
27 required pursuant to this paragraph does not require the amendment or
28 refiling of any notice filed before July 1, 2001 or before July 1 of the year
29 in which the subdivision becomes located in a high noise or accident
30 potential zone.

31 24. If the subdivision is a conversion from multifamily rental to
32 condominiums as defined in section 33-1202, a true statement as to the
33 following:

34 (a) That the property is a conversion from multifamily rental to
35 condominiums.

36 (b) The date original construction was completed.

37 25. Other information and documents and certifications as the
38 commissioner may reasonably require **PROVIDED THAT THE SUBDIVIDER SHALL NOT BE**
39 **REQUIRED TO DISCLOSE ANY CRITICAL INFRASTRUCTURE INFORMATION AS DEFINED IN**
40 **SECTION 41-1801 OR ANY INFORMATION CONTAINED IN A REPORT ISSUED PURSUANT TO**
41 **SECTION 41-4273.**

42 B. The commissioner, on application, may grant a subdivider of lots or
43 parcels within a subdivision for which a public report was previously issued
44 by the commissioner an exemption from all or part of the notification
45 requirements of subsection A of this section. The subdivider shall file a

1 statement with the commissioner indicating the change of ownership in the
2 lots or parcels together with any material changes occurring subsequent to
3 the original approval of the subdivision within which the lots or parcels are
4 located. The statement shall further refer to the original approval by the
5 commissioner.

6 C. If the subdivision is within an active management area, as defined
7 in section 45-402, the subdivider shall accompany the notice with a
8 certificate of assured water supply issued by the director of water resources
9 along with proof that all applicable fees have been paid pursuant to sections
10 48-3772 and 48-3774.01, unless the subdivider has obtained a written
11 commitment of water service for the subdivision from a city, town or private
12 water company designated as having an assured water supply by the director of
13 water resources pursuant to section 45-576 or is exempt from the requirement
14 pursuant to section 45-576. If the subdivider has submitted a certificate of
15 assured water supply to a city, town or county prior to approval of the plat
16 by the city, town or county and this has been noted on the face of the plat,
17 the submission constitutes compliance with this subsection if the subdivider
18 provides proof to the commissioner that all applicable fees have been paid
19 pursuant to sections 48-3772 and 48-3774.01.

20 D. It is unlawful for a person or group of persons acting in concert
21 to attempt to avoid this article by acting in concert to divide a parcel of
22 land or sell subdivision lots by using a series of owners or conveyances or
23 by any other method that ultimately results in the division of the lands into
24 a subdivision or the sale of subdivided land. The plan or offering is
25 subject to this article. Unlawful acting in concert pursuant to this
26 subsection with respect to the sale or lease of subdivision lots requires
27 proof that the real estate licensee or other licensed professional knew or
28 with the exercise of reasonable diligence should have known that property
29 which the licensee listed or for which the licensee acted in any capacity as
30 agent was subdivided land subject to this article.

31 E. A creation of six or more lots, parcels or fractional interests in
32 improved or unimproved land, lots or parcels of any size is subject to this
33 article except when:

34 1. Each of the lots, parcels or fractional interests represents, on a
35 partition basis, thirty-six acres or more in area of land located in this
36 state, including to the centerline of dedicated roads or easements, if any,
37 contiguous to the land in which the interests are held.

38 2. The lots, parcels or fractional interests are the result of a
39 foreclosure sale, the exercise by a trustee under a deed of trust of a power
40 of sale or the grant of a deed in lieu of foreclosure. This paragraph does
41 not allow circumvention of the requirements of this article.

42 3. The lots, parcels or fractional interests are created by a valid
43 order or decree of a court pursuant to and through compliance with title 12,
44 chapter 8, article 7 or by operation of law. This paragraph does not allow
45 circumvention of the requirements of this article.

1 4. The lots, parcels or fractional interests consist of interests in
2 any oil, gas or mineral lease, permit, claim or right therein and such
3 interests are regulated as securities by the United States or by this state.

4 5. The lots, parcels or fractional interests are registered as
5 securities under the laws of the United States or the laws of this state or
6 are exempt transactions under section 44-1844, 44-1845 or 44-1846.

7 6. The commissioner by special order exempts offerings or dispositions
8 of any lots, parcels or fractional interests from compliance with this
9 article on written petition and on a showing satisfactory to the commissioner
10 that compliance is not essential to the public interest or for the protection
11 of buyers.

12 F. In areas outside of active management areas established pursuant to
13 title 45, chapter 2, article 2:

14 1. If the subdivision is located in a county that has adopted the
15 provision authorized by section 11-806.01, subsection F, or in a city or town
16 that has enacted an ordinance pursuant to section 9-463.01, subsection O, the
17 subdivider shall accompany the notice with a report issued by the director of
18 water resources pursuant to section 45-108 stating that the subdivision has
19 an adequate water supply, unless one of the following applies:

20 (a) The subdivider submitted the report to a city, town or county
21 before approval of the plat by the city, town or county and this has been
22 noted on the face of the plat.

23 (b) The subdivider has obtained a written commitment of water service
24 for the subdivision from a city, town or private water company designated as
25 having an adequate water supply by the director of water resources pursuant
26 to section 45-108.

27 (c) The plat was approved pursuant to an exemption authorized by
28 section 9-463.01, subsection K, pursuant to an exemption authorized by
29 section 11-806.01, subsection G, paragraph 1, pursuant to an exemption
30 granted by the director of water resources under section 45-108.02 and the
31 exemption has not expired or pursuant to an exemption granted by the director
32 under section 45-108.03. If the plat was approved pursuant to an authorized
33 exemption, the state real estate commissioner shall require that all
34 promotional material and contracts for the sale of lots in the subdivision
35 adequately display the following:

36 (i) The director of water resources' report or the developer's brief
37 summary of the report as approved by the commissioner on the proposed water
38 supply for the subdivision.

39 (ii) A statement describing the exemption under which the subdivision
40 was approved, including the specific conditions of the exemption that were
41 met. If the plat was approved by the legislative body of a city or town
42 pursuant to an exemption authorized by section 9-463.01, subsection K or by
43 the board of supervisors of a county pursuant to an exemption authorized by
44 section 11-806.01, subsection G, paragraph 1, the subdivider shall record the
45 document required by section 33-406.

1 (d) The subdivision received final plat approval from the city, town
2 or county before the requirement for an adequate water supply became
3 effective in the city, town or county, and there have been no material
4 changes to the plat since the final plat approval. If changes were made to
5 the plat after the final plat approval, the director of water resources shall
6 determine whether the changes are material pursuant to the rules adopted by
7 the director to implement section 45-108. If this subdivision applies, the
8 state real estate commissioner shall require that all promotional materials
9 and contracts for the sale of lots in the subdivision adequately display the
10 director of water resources' report or the developer's brief summary of the
11 report as approved by the commissioner on the proposed water supply for the
12 subdivision.

13 2. If the subdivision is not located in a county that has adopted the
14 provision authorized by section 11-806.01, subsection F or in a city or town
15 that has enacted an ordinance pursuant to section 9-463.01, subsection O, and
16 if the director of water resources, pursuant to section 45-108, reports an
17 inadequate on-site supply of water to meet the needs projected by the
18 developer or if no water is available, the state real estate commissioner
19 shall require that all promotional material and contracts for the sale of
20 lots in subdivisions approved by the commissioner adequately display the
21 director of water resources' report or the developer's brief summary of the
22 report as approved by the commissioner on the proposed water supply for the
23 subdivision.

24 G. The commissioner may require the subdivider to supplement the
25 notice of intention to subdivide lands and may require the filing of periodic
26 reports to update the information contained in the original notice of
27 intention to subdivide lands.

28 H. The commissioner may authorize the subdivider to file as the notice
29 of intention to subdivide lands, in lieu of some or all of the requirements
30 of subsection A of this section, a copy of the statement of record filed with
31 respect to the subdivision pursuant to the federal interstate land sales full
32 disclosure act if the statement complies with the requirements of the act and
33 the regulations pertinent to the act.

34 I. Neither a real estate sales contract, conveyance, lease, assignment
35 or other instrument to transfer any interest in subdivided land nor any
36 covenant or restriction affecting real property shall contain any provision
37 limiting the right of any party to appear or testify in support of or
38 opposition to zoning changes, building permits or any other official acts
39 affecting real property before a governmental body or official considering
40 zoning changes, building permits or any other official acts affecting real
41 property, whether the property is located within or outside of the boundaries
42 of the subdivision. All contractual provisions that conflict with this
43 subsection are declared to be contrary to public policy. Nothing contained
44 in this subsection shall prohibit private restrictions on the use of any real
45 property.

1 J. Before offering subdivided lands for lease or sale, the subdivider
2 who makes any promises through any form of advertising media that the
3 subdivided lands will be exclusively a retirement community or one that is
4 limited to the residency of adults or senior citizens shall include the
5 promises in the deed restrictions affecting any interest in real property
6 within the subdivided lands.

7 Sec. 2. Title 41, chapter 41, Arizona Revised Statutes, is amended by
8 adding article 2, to read:

9 ARTICLE 2. CRITICAL INFRASTRUCTURE

10 41-4271. Definitions

11 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

12 1. "COMMISSION" MEANS THE ARIZONA CORPORATION COMMISSION.

13 2. "CRITICAL INFRASTRUCTURE" HAS THE SAME MEANING PRESCRIBED IN
14 SECTION 41-1801.

15 3. "FUEL FACILITY" MEANS A COMMERCIAL AVIATION FUEL, PETROLEUM OR
16 NATURAL GAS TRANSMISSION FACILITY IN THIS STATE THAT IS NOT LOCATED ON THE
17 PREMISES OF A COMMERCIAL AIRPORT.

18 41-4272. Protection of critical infrastructure; fuel facilities

19 NOTWITHSTANDING ANY OTHER LAW, ON OR BEFORE OCTOBER 1 OF EACH YEAR THE
20 OWNERS OF A FUEL FACILITY SHALL PROVIDE A WRITTEN REPORT TO THE DIRECTOR
21 REGARDING SECURITY MEASURES BEING TAKEN BY THE OPERATORS OF THE FUEL FACILITY
22 AND BY ANY OTHER AGENCY OR AUTHORITY OF THIS STATE OR ANY POLITICAL
23 SUBDIVISION OF THIS STATE AND, TO THE EXTENT PRACTICABLE, OF ANY FEDERAL
24 ENTITY, TO PROTECT THE SECURITY OF THE CRITICAL INFRASTRUCTURE. THE OWNERS
25 OF THE FUEL FACILITY AND ANY OTHER AGENCY OR AUTHORITY OF THIS STATE OR ANY
26 POLITICAL SUBDIVISION OF THIS STATE INVOLVED IN THE PROTECTION OF THIS
27 CRITICAL INFRASTRUCTURE SHALL COORDINATE AND COOPERATE IN THE PREPARATION OF
28 THE REPORT AND SHALL MAKE A GOOD FAITH EFFORT TO INCLUDE INPUT FROM ANY
29 FEDERAL ENTITY INVOLVED IN THE PROTECTION OF THIS CRITICAL INFRASTRUCTURE.
30 AS DEEMED APPROPRIATE BY THE DIRECTOR, THE DEPARTMENT MAY PHYSICALLY INSPECT
31 THE PREMISES AND REVIEW ANY AUDITS OR REPORTS RELATED TO THE SECURITY OF THE
32 CRITICAL INFRASTRUCTURE, INCLUDING AUDITS OR REPORTS CONDUCTED AT THE REQUEST
33 OF ANY OTHER AGENCY OR AUTHORITY OF THIS STATE OR ANY POLITICAL SUBDIVISION
34 OF THIS STATE OR, TO THE EXTENT PRACTICABLE, OF ANY FEDERAL ENTITY. THE
35 OPERATORS OF THE FUEL FACILITY, IN COMPLIANCE WITH ANY FEDERAL AND STATE
36 REQUIREMENTS REGARDING THE DISSEMINATION OF THIS INFORMATION, SHALL PROVIDE
37 ACCESS TO THE DIRECTOR TO THE AUDITS OR REPORTS REGARDING CRITICAL
38 INFRASTRUCTURE. THE EXCLUSIVE CUSTODY AND CONTROL OF THE AUDITS AND REPORTS
39 REMAIN SOLELY WITH THE OPERATORS OF THE FUEL FACILITY.

40 41-4273. Reporting requirements; confidentiality

41 A. BEFORE JANUARY 1, 2010, AND EVERY FIVE YEARS THEREAFTER, THE
42 DIRECTOR SHALL PROVIDE A REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE,
43 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE COMMISSION AND THE OPERATOR
44 OF A FUEL FACILITY LISTING THE DIRECTOR'S RECOMMENDATIONS TO THE LEGISLATURE,
45 THE COMMISSION, THE OPERATORS OF A FUEL FACILITY OR ANY APPROPRIATE STATE OR

1 FEDERAL REGULATING ENTITY OR AGENCY OF ANY ADDITIONAL SECURITY MEASURES THAT
2 ARE REQUIRED TO BE IMPLEMENTED, IF THE DIRECTOR DETERMINES THE MEASURES ARE
3 REQUIRED CONSIDERING AMONG OTHER FACTORS THE UNIQUE CHARACTERISTICS OF EACH
4 FUEL FACILITY.

5 B. BEFORE RECEIVING THE REPORT REQUIRED BY SUBSECTION A, EACH
6 RECIPIENT OF THE REPORT SHALL DEVELOP CONFIDENTIALITY PROTOCOLS, IN
7 CONSULTATION WITH THE DIRECTOR FOR THE MAINTENANCE AND USE OF THE REPORT TO
8 ENSURE THE CONFIDENTIALITY OF THE REPORT AND ALL INFORMATION CONTAINED IN THE
9 REPORT. THE CONFIDENTIAL PROTOCOLS ARE BINDING ON THE RECIPIENT THAT ISSUES
10 THE PROTOCOLS AND ANYONE TO WHOM THE RECIPIENT SHOWS A COPY OF THE REPORT.
11 THE REPORT AND ANY INFORMATION CONTAINED OR USED IN ITS PREPARATION ARE
12 EXEMPT FROM AND SHALL NOT BE MADE AVAILABLE PURSUANT TO TITLE 39, CHAPTER 1,
13 ARTICLE 2. THE DIRECTOR SHALL ALSO DEVELOP PROTOCOLS FOR THE DEPARTMENT
14 RELATED TO THE MAINTENANCE AND USE OF THE REPORT TO ENSURE THE
15 CONFIDENTIALITY OF THE REPORT AND ALL INFORMATION CONTAINED IN THE REPORT.
16 ON EACH REPORT, THE DIRECTOR SHALL PROMINENTLY DISPLAY THE FOLLOWING
17 STATEMENT: "THIS REPORT MAY CONTAIN INFORMATION THAT IF DISCLOSED COULD
18 ENDANGER THE LIFE OR SAFETY OF THE PUBLIC. THIS REPORT IS TO BE MAINTAINED
19 AND USED IN A MANNER CONSISTENT WITH PROTOCOLS ESTABLISHED TO PRESERVE THE
20 CONFIDENTIALITY OF THE INFORMATION CONTAINED IN THIS REPORT IN A MANNER
21 CONSISTENT WITH LAW".

22 41-4274. Corporation commission power

23 THE COMMISSION MAY REQUIRE, BY RULE, THAT THE RECOMMENDATIONS OF THE
24 DIRECTOR BE IMPLEMENTED AT AN AFFECTED FUEL FACILITY.